STATE OF MICHIGAN

COURT OF APPEALS

GRAND/SAKAWA MACOMB AIRPORT, L.L.C. as Assignee of GRAND/SAKWA PROPERTIES, INC., and AVIATION INVESTMENT CORPORATION, Plaintiffs-Appellees,	UNPUBLISHED June 7, 2005
v	No. 256013 Macomb Circuit Court
TOWNSHIP OF MACOMB, Defendant-Appellant.	LC No. 99-002514-CZ

Before: Meter, P.J., Wilder and Schuette, JJ.

PER CURIAM.

Defendant appeals of right from an order of voluntary dismissal in this land use and zoning action involving defendant's denial of plaintiffs' request to rezone three parcels of property owned by defendant. We affirm in part, reverse in part, and remand for further proceedings.

I

Plaintiffs' property is owned by plaintiff Aviation Investment Corporation (AIC) which leases the property to Milton Berz for an annual rental of approximately $33,000. AIC purchased the property for $1.1 million in 1970. In 1973, Berz, a principal and shareholder in AIC, began using the property as an airport for small planes and jets. The airport operated continuously until it closed in 2003. In 1999, Berz Macomb Airport had approximately 39,000 landings and take-offs.

In an August 1998 sale agreement, AIC agreed to sell the property to plaintiff Grand/Sakwa and the Berz Airport for a proposed purchase price of $14 million dollars. The agreement was contingent on plaintiffs' ability to have the property rezoned from its current industrial zoning classification to commercial and residential zoning.

Pursuant to the agreement contingency, in September 1998, plaintiffs submitted a request to the township planning commission to rezone the subject properties, located between 22 Mile Road and 24 Mile Road and also between Romeo Plank Road and Hayes Road as follows:

Parcel 1: 24.11 acres from (M-1) Light Industrial to (C-3) Commercial Shopping Center –located on the northeast corner of 22 Mile Road and Hayes Road; Parcel No. 08-19-300-005 and 08-19-300-006.

Parcel 2: 55.04 acres from (M-1) light Industrial to (C-3) Commercial Shopping Center –located on the southeast corner of 23 Mile Road and Hayes Road, Parcel No. 08-19-100-006.

Parcel 3: 190.05 acres from (M-2) Heavy Industrial to (R-1) Residential Urban-One family- located north of 22 Mile Road and approximately 1200 feet east of Hayes Road, Parcel No. 08-19-200-009.

22 Mile Road is primarily a residential corridor with some scattered commercial development and institutional uses such as churches, schools and day care. On the south side of 22 Mile Road, immediately across from plaintiffs' property are several residential subdivisions. The township side of Hayes Road, between 22 Mile and 23 Mile Roads, is mostly vacant and unimproved land, with the exception of a few residential homes, industrial and commercial development. On the Shelby Township side of Hayes Road, between 22 mile and 23 Mile Road, is an industrial park that contains heavy industrial uses, a vacant industrial park with roads and utilities but no actual development, and construction for a new shopping center. 1,100,000 square feet of vacant industrial buildings are for sale or lease along the 23 Mile Road corridor in Shelby and Macomb townships. The corners of both 22 and 23 Mile Roads contain commercial uses. On the south side of 23 Mile Road, abutting plaintiffs' property, is a developed industrial subdivision without any buildings. Defendant rezoned the north side of 23 Mile and Hayes from industrial to commercial use. The property immediately along the east of plaintiffs' property is zoned for agricultural use (AZ). One-acre single-family residential development is permitted in property zoned AZ.

The development of the township's land use plan began in 1969. In September 1969, an economic relations study was prepared by the planning commission in preparation of the 1973 master plan. Defendant's March 1970 land use plan recommended, *inter alia*, that all industrial activity be contained in the area at issue, in light of its proximity to the Berz Airport, with the airport situated as the nucleus of the entire area. In 1973, the township filed its first master land use plan, which adopted the recommendation to designate the subject property for industrial use. Based on the 1973 master plan, a 1973 zoning ordinance was prepared for the township. The township board adopted the zoning ordinance on November 10, 1973, and pursuant to this zoning ordinance, the subject property was zoned industrial. The township master plan was completely rewritten twice, in 1988 and 1993 – 1994. Four amendments to the 1993 – 1994 master plan were adopted in 1999, and the 1999 master plan was amended on October 19, 2000.

Minutes of the public hearing held on February 16, 1999 reflect that the planning commission recommended denial of plaintiffs' rezoning requests. A public hearing of the township board was held on May 26, 1999. According to the minutes of that meeting, plaintiffs' rezoning requests for Parcels 1 and 2 were denied on the basis that the properties' (1) current zoning was consistent with the township's master plan; (2) the requested rezoning would be inconsistent with the master plan; (3) plaintiffs failed to demonstrate that the current zoning of the properties is arbitrary, unreasonable and does not advance a legitimate governmental interest; (4) plaintiffs failed to demonstrate that the properties could not be used for any purpose under the

current zoning classification; (5) there were no other areas in the township that could logically be planned for the same industrial use to replace the loss of the properties; and (6) that the rezoning of the properties would cause the elimination of the township's industrial base. The meeting minutes further show that the township board also articulated these six reasons in denying the request for rezoning of Parcel 3, the rezoning of Parcels 1 and 2, with the additional three reasons that (7) plaintiffs' rezoning request is inconsistent and incompatible with current and planned development of current industrial areas; (8) plaintiffs' residential rezoning request was incompatible with existing industrial development, creating spot zones inconsistent with current building patterns; and (9) plaintiffs' rezoning request would eliminate industrial development from the master plan because it would require that the properties between Parcel 3 and residential property located to the east which were currently planned for industrial development to be rezoned to residential. After discussions with the township's legal counsel, plaintiffs elected to initiate an action in circuit court challenging the denial of the three rezoning requests in lieu of seeking a use variance from the Township Zoning Board of Appeals.

Plaintiffs' amended complaint is seven counts. In Count I, plaintiffs asserted a substantive due process claim, alleging that the township's denial of the rezoning requests was capricious and arbitrary, and that no reasonable or legitimate governmental interest was advanced by limiting plaintiffs' properties to their current use. In Count II, plaintiffs' alleged the denial of the rezoning requests constituted a confiscatory restriction and a taking without just compensation contrary to the state constitution. Count III, a state equal protection claim, alleges that the industrial use zoning restriction precluded the property's use for any purposes for which it is reasonably adapted. In Count IV, plaintiffs requested mandamus, damages and declaratory relief, principally alleging the township breached its legal duties, which caused plaintiffs irreparable injury. Count V raised an exclusionary zoning claim, alleging that the township's actions effectively removed any appropriate locations suitable for plaintiffs' proposed development. Count VI alleged inverse condemnation and Count VII alleged that plaintiffs were entitled to damages under 42 USC § 1983 as the result of defendant's violation of their constitutional rights.

The trial court, Macomb County Visiting Circuit Judge Kenneth N. Sanborn, bifurcated the equitable/taking claims and the damages claims and the matter proceeded to trial on Count I (substantive due process), Count II (confiscatory taking), and Count VI (inverse condemnation). Plaintiffs dismissed, without prejudice, Count III (equal protection) and Count V (exclusionary zoning). Following trial on the equitable taking claims, the parties each submitted proposed findings of facts and conclusions of law. Judge Sanborn issued his findings of fact and conclusions of law on April 2, 2001, concluding that defendant's ordinance was arbitrary, capricious and excluded other types of legitimate land use from plaintiffs' property, denied plaintiffs the economically viable use of their land; and deprived plaintiffs of their investment-backed expectations. Judge Sanborn also found that plaintiffs' proposed commercial and residential uses of the property were reasonable. Judge Sanborn made 108 findings of fact, stating in relevant part:

> [FOF-2] (B) Grand/Sakwa's proposed uses are more compatible with the uses and development trends in the surrounding area.
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> * * *

[FOF-4] (D) The development trends surrounding the property continue to reflect an extensive amount of vacant industrial buildings for sale or lease and significant vacant improved industrial lots and there appears to be an adequate supply of industrial property to meet the future demands of Macomb township without the Plaintiffs' property.

* * *

[FOF-9] (D) The original historical basis for Master Planning the Bertz-Macomb area has substantially changed as a result of the re-alignment of M-59 to Hal Road from 21-1/2 Mile Road as originally proposed.

* * *

[FOF-36] (A) While the Township's desire to have an industrial tax base may be valid, the township's concern about losing some of its tax as a result of the proposed rezonings is unfounded since Grand/Sakwa's proposed mix-use will generate significantly more tax revenue for the Township than would be generated by the property under its current use.

[FOF-37] (B) Macomb Township does not and has not master planned land for commercial and agricultural uses. Essentially the Township has used and is using an ad hoc, case specific, approach with respect to the planning, zoning, and development of agricultural and commercial properties.

* * *

[FOF-40] (E) The Township has not been diligent in updating its master plans to reflect changes in economic and development trends which show that the Township's industrial market is slow, industrial growth has occurred much slower that anticipated, and Macomb Township is the fastest growing municipality in the state . . . .

* * *

[FOF-53] (R) The industrial master planning and zoning of the subject property is unreasonable given that the Township admitted that industrial development is incompatible with the residential development that occurred and continues to occur in the areas around the subject site.

[FOF-54] (S) The current zoning of the agricultural parcel abutting the subject property to the east allows, as a permitted use, the development of single-family residences on minimum one acre lots. However, according to the Township's planner, if the owner of that property were to submit an application to develop the property as single-family residences on minimum one acre lots, the Township would initiate proceedings to rezone the property to industrial in order to prevent the development.

* * *

[FOF-56] (B) The 1999 Master Plan contained a change in the Township's commercial policy. The Township's 1999 policy still provides that the commercial development be supported by a demonstrated need for the proposed commercial use.

[FOF-57] (C) The timing of the 1999 change in the Township's commercial development policy is suspect. The 1999 Master plan was submitted and approved subsequent to commencement of this litigation. The update was submitted at that time as a result of issues raised in this current . . . civil action.

[FOF-58] (D) The Macomb Township Planning Commission, against the judgment of its planners, rushed to complete the limited 1999 amendments made to the Master Plan before receiving the current 2000 census data.

* * *

[FOF-61] (G) The Township's Commercial Development Atlas shows that there are very few vacancies in the Township's developed commercial centers.

[FOF-62] (H) The end result of the 1999 change to the Township's commercial development policy is that the Planning Commission intentionally created an obstacle for Grand/Sakwa to overcome before developing the property it seeks to have rezoned to commercial.

* * *

[FOF-107] (G) In short, Grand/Sakwa's proposed rezonings for mixed-use development are consistent with the development trends for the area, are appropriate for the subject site, provide for uses for which there are current demands, and are supported by sound planning rationale. [Trial Court's Findings of Fact, pp 1-12.]

The parties were unable to agree on a proposed order for entry of judgment and after several months of motions and hearings, then Macomb County Circuit Judge Patrick Donofrio entered a judgment in favor of plaintiffs. This order was subsequently vacated by Judge Donofrio and the matter was referred to Judge Sanborn, who entered a judgment approving plaintiffs' proposed residential and commercial uses for the subject property and enjoining defendant from interfering with plaintiffs' development pursuant to their requested zoning classifications. The judgment preserved, for later trial, the issue of plaintiffs' damages.

Although trial on plaintiffs' damages claims was scheduled, trial was stayed by the trial court, over defendant's objections, until plaintiffs obtained approval of their development plans.[1] On June 11, 2004, the stay was lifted and, pursuant to the parties stipulations a final order was entered dismissing plaintiffs' damages claims without prejudice. This appeal ensued.

II

Although "there is no single standard of review that applies in zoning cases," *Macenas v Village of Michiana*, 433 Mich 380, 394; 446 NW2d 102 (1989), we review the specific questions presented in this equitable action de novo as questions of law. *Kropf v Sterling Heights*, 391 Mich 139, 152, 163; 215 NW2d 179 (1974); *Jude v Heselschwerdt*, 228 Mich App 667, 670; 578 NW2d 704 (1998). Giving considerable weight to the findings of the trial judge, we review for clear error the findings of fact supporting the decision. See *Kropf*, *supra* at 163; *Hecht v Niles Twp*, 173 Mich App 453, 458-459; 434 NW2d 156 (1988). A clearly erroneous standard of review for findings of fact recognizes and defers to the trial court's superior position to observe the credibility of the witnesses who testify during the bench trial. MCR 2.613(C); *Marshall Lasser, PC v George*, 252 Mich App 104, 110; 651 NW2d 158 (2002). Thus, to reverse a trial court's factual finding as clearly erroneous, we must conclude that although there is evidence to support it, we are nonetheless, upon review of the entire record, left with the definite and firm conviction that a mistake was made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

III

A

The state and federal constitutions guarantee that no person shall be deprived of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. In order to afford a property owner substantive due process, an ordinance must be reasonable and rationally related to a legitimate governmental interest. *Landon Holdings, Inc v Grattan Twp*, 257 Mich App 154, 173-174; 667 NW2d 93 (2003). The reasonable basis for an ordinance must be grounded in the police power and includes protection of the safety, health, morals, prosperity, comfort, convenience, and welfare of the public. *Hecht*, *supra* at 460. A zoning ordinance is presumed to be valid, and the party challenging the ordinance has the burden of showing that it has no real or substantial relation to public health, morals, safety, or general welfare. *Bevan v Brandon Twp*, 438 Mich 385, 398; 475 NW2d 37 (1991), amended on other grounds 439 Mich 1202 (1991). A zoning ordinance also violates due process where it constitutes an unreasonable means of advancing a legitimate governmental interest. *Hecht*, *supra* at 461. Thus, an ordinance may not unreasonably, arbitrarily, or capriciously exclude other types of legitimate land use from the area in question. *Kropf*, *supra* at 158. In order to establish a substantive due process

[1] Between August 1, 2003 and March 23, 2004, plaintiffs proceeded with development and have received permits and approvals from various agencies and the township board for an outlay of $464,000.

violation, it must appear that the ordinance is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness. *Id*. at 162.

Defendant, citing *Brae Burn, Inc v Bloomfield Hills*, 350 Mich 425, 430-432; 86 NW2d 166 (1957), asserts that judicial review of a zoning ordinance is deferential and limited, and that in determining the constitutionality of a zoning classification, this Court should do no more than determine whether the classification is or is not fairly debatable. Stated differently, defendant contends that so long as it has presented some evidence that its legislative zoning determination is arguably correct, irrespective of any contradictory evidence, this Court should defer to its legislative zoning decision. The "debatable question" rule enunciated by the Supreme Court in *Brae Burn*, *supra* at 432-433, provides:

> The question always remains: As to this property, in this city, under this particular plan (wise or unwise though it may be), can it fairly be said there is not even a debatable question? If there is, we will not disturb*.*
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> * * *
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> This is not to say, of course, that a local body may with impunity abrogate constitutional restraints. The point is that we require more than a debatable question. We require more than a fair difference of opinion. It must appear that the clause attacked is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness.

In *Alderton v Saginaw*, 367 Mich 28, 33-34; 116 NW2d 53 (1962), the Supreme Court explained the scope and application of the "debatable question" rule:

> The debatable question rule as presented in *Brae Burn, supra*, does not mean such question exists merely because there is a difference of opinion between the zoning authority and the property owner in regard to the validity of the ordinance. If this were the case, no ordinance could ever be successfully attacked. In determining validity [sic] of an ordinance we give consideration to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the general trend and character of building and population development; unsuitability for residential purposes; lack of market for such purpose and whether the land will become "dead land" or nonincome-producing land without residential value. [see also *Reibel v Birmingham*, 23 Mich App 732, 736, 179 NW2d 243 (1970) (the "debatable question" criterion which limits appellate review when the rationality of zoning is put in issue does not govern when the factual question presented is whether particular property can reasonably be used as zoned).]

The scope of our review is also guided, however, by the Supreme Court's instruction in *Kropf*, *supra* at 163-164. There, the Court reviewed a confiscatory taking claim in which the parties' presented equally forceful evidence that could reasonably support either party's position, and noted that "in cases . . . where the evidence presented on the record could reasonably support either party" an appellate court should:

> [G]ive considerable weight to the findings of the trial judge in equity cases . . . because the trial judge is in a better position to test the credibility of the witnesses by observing them in court and hearing them testify than is an appellate court which has no such opportunity . . . . [Moreover], the findings of the trial judge in an equity case . . . [should not be disturbed] unless after an examination of the entire record, we reach the conclusion we would have arrived at a different result had we been in the position of the trial judge. [*Id.* (citations omitted).]

Accordingly, while defendant's zoning decision may initially be entitled to deference and presumed valid on the basis of the rationale articulated by the defendant, this presumption of validity is *rebuttable* and may be overcome by the evidence. If the trial court's findings are such that it concludes plaintiffs have established by clear, satisfactory, and competent evidence that defendant's ordinance " 'is an arbitrary fiat, a whimsical *ipse dixit*,' " plaintiffs are entitled to prevail unless we conclude that the trial court's findings are clearly erroneous or that, on the basis of the whole record, we would have reached a different conclusion than the trial judge.

B

Defendant contends that the trial court erred in finding that the zoning ordinance in question is arbitrary and capricious. We disagree. Principally, defendant contends the zoning classifications are in accordance with its master plan, that the classifications advance a reasonable governmental interest to plan for future industrial development and employment, to separate incompatible land uses, to provide a tax base that created more revenue than residential development and to maintain the faith of its residents who made commitments on the basis of its current zoning. While these stated goals are certainly legitimate governmental interests, the record does not support defendant's contention that its defense of the ordinance in question was in support of these legitimate interests.

Regarding defendant's master plan, the trial court found that the realignment of M-59 to Hall Road from 21-1/2 Mile Road had substantially changed what was the historical basis for the initial plan, and that defendant had not diligently updated the plan to reflect changes in economic and development trends. Moreover, the trial court found that defendant had demonstrated a significant willingness to modify or deviate from the master plan on an inconsistent basis, as most significantly demonstrated by the already existing incompatible land classifications adjacent to the subject property. The trial court did not clearly err in making these findings of fact.

Even if defendant had demonstrated adherence to its master plan, such adherence is but one factor in determining the reasonableness of an ordinance. *Troy Campus v City of Troy*, 132 Mich App 441, 457; 349 NW2d 1777 (1984). In order to be determined reasonable, the master plan must take into account existing circumstances, *Biske v Troy*, 381 Mich 611, 617-618; 166 NW2d 453 (1969); *Gust v Canton Twp*, 342 Mich 436, 440-442; 70 NW2d 772 (1955), and other pertinent factors, including, the stability of the master plan, the extent to which the goals of the master plan are advanced, and the extent to which the master plan constitutes a coherent

development plan taking into account legitimate expectations. *Id.*; *Biske, supra* at 617-618. The trial court's findings of fact[2] that defendant's admissions, that industrial development as contemplated in the master plan is incompatible with the residential development that had already occurred and continued to occur in the areas around the subject site, that the agricultural zoning adjacent to the subject site would accommodate as a permitted use the development of single-family residential property on one acre lots, and that, inconsistent with it's master plan, defendant would initiate proceedings to rezone agricultural property to industrial to prevent such residential development, demonstrates that defendant's master plan neither takes into account existing circumstances nor exhibits a stability or coherence in the plan of development.

Regarding defendant's contention that its zoning ordinance advances a reasonable governmental interest to plan for future industrial development and employment, the trial court made findings of fact that, despite the fact that Macomb Township was at the time of trial the fastest growing municipality in the state, industrial growth was much slower than anticipated, that there is a lack of demand for industrial property, and that using defendant's industrial development data, it would take between thirty-seven and forty years to absorb the land master planned as development by defendant. The trial court further found that industrial development is incompatible with the nearby residential development, that defendant's adoption of its 1999 master plan update occurred with the intention to create an obstacle to plaintiffs' proposed rezoning, and that the residential growth of the township will create demand for and support the commercial developments and growth proposed by plaintiffs. These findings of fact are not clearly erroneous on the record before us.

Defendant's assertions that its zoning separates incompatible land uses and provides more revenue for its tax base are similarly not supported by the record. The trial court's findings that plaintiffs' proposed development is consistent with existing land uses, and that defendant's insistence on maintaining an industrial zoning in the subject area is inconsistent with nearby uses and current economic and development trends are well supported by the evidence, and are not clearly erroneous. Moreover, while defendant asserts that township property owners are entitled to rely upon the existing zoning schemes established in the master plan, specifically, the location of industrial-zoned property within the township, defendant offered no testimony by specific property owners of such reliance and the trial court made no specific findings regarding such reliance. On the whole, we find no basis to disturb the trial court's findings of fact.

The reasons asserted by defendant to support their claim that the zoning ordinance in question was not arbitrary and capricious are not supported. Thus, plaintiffs have carried their burden of demonstrating that the township ordinance did not advance a legitimate governmental interest, that the ordinance " "is an arbitrary fiat, a whimsical *ipse dixit*,' " and that there is no room for a legitimate difference of opinion concerning the ordinance's reasonableness. *Kropf, supra* at 162, quoting *Brae Burn, supra* at 432. We find no basis on this record to conclude that we would have reached a different conclusion than the trial judge.

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[2] These findings are also not clearly erroneous.

C

Defendant next argues that the trial court erred by concluding that the ordinance constitutes a confiscatory taking of plaintiffs' property.[3] We agree. In *K&K Construction, Inc v Dep't of Natural Resources*, 456 Mich 570, 576-577; 575 NW2d 531 (1998), our Supreme Court summarized the requisites of a taking claim:

> [C]ourts have found that land use regulations effectuate a taking in two general situations: (1) where the regulation does not substantially advance a legitimate state interest, or (2) where the regulation denies an owner economically viable use of his land.
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> The second type of taking, where the regulation denies an owner of economically viable use of land, is further subdivided into two situations: (a) a "categorical" taking, where the owner is deprived of "all economically beneficial or productive use of land," or (b) a taking recognized on the basis of the application of the traditional "balancing test" [established in *Penn Central Transportation Co v City of New York*, 438 US 104; 98 S Ct. 2646; 57 L Ed 2d 631 (1978)].
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> * * *
>
> In the latter situation, the balancing test, a reviewing court must engage in an "ad hoc, factual inquir[y]," centering on three factors: (1) the character of the government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations. [Citations omitted.]

In this case, plaintiffs effectively conceded that the township's decision did not constitute a "categorical" taking. Thus, we apply the balancing test to determine whether the evidence showed that plaintiffs were denied the economically viable use of their land. We conclude that it does not. Even if we were to assume that the character of the township's action was not simply the legislative application of a zoning classification affecting plaintiffs' property, we find no facts in the record to support a finding that defendant's choice to zone plaintiffs' property for industrial use negatively impacted the economical viable use of the property or that the regulation has interfered with distinct, investment-backed expectations. Instead, the record shows that plaintiffs, at the time of the original purchase, were aware of the land's current land use plans/zoning, but hoped for substantial industrial development in the area. In our judgment, the fact that the pace of industrial development in the surrounding area did not occur at the rate plaintiffs hoped is insufficient to constitute a taking, where defendant submitted evidence establishing the value of the property under its current zoning between $8 million and $9.2 million dollars. While plaintiffs' emphasize their inability to make a profit, distribute dividends,

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[3] A distinct analysis must be used for both a confiscatory taking claim and a substantive due process claim. *Hecht, supra* at 462.

or sell the property as currently zoned, "the Taking Clause does not guarantee property owners an economic profit from the use of their land." *Paragon Props Co, supra* at 579 n 13. Nor does the mere diminution of property value by application of regulations, without more, amount to an unconstitutional taking. *Id.* at 579, citing *Penn Central, supra* at 104. Plaintiffs' own appraisal at the time of the sale agreement to sell the property to Grand/Sakwa appraised the property at $7 million. Moreover, AIC also received $33,000 in annual rental income. Notably, plaintiffs concede that, at the start of their endeavor to operate an airport, they had full knowledge that an airport operation generally produces low profits, if any at all. Given this evidence, taken with the uncontroverted evidence establishing that plaintiffs, in the seventeen years immediately preceding Grand/Sakwa's proposed purchase, made no attempts to market the property, we conclude that a definite mistake has been made. The trial court clearly erred in finding that a confiscation occurred.

D

Defendant next claims that the trial court's remedy to impose an injunction was overbroad and that plaintiff failed to meet the high threshold necessary to establish that their proposed use for the subject property was reasonable. We disagree. After finding an existing zoning classification to be unconstitutional, a trial court should determine the reasonableness of the proposed use. *Rogers v Allen Park*, 186 Mich App 33, 40; 463 NW2d 431 (1990). Reasonableness can be determined by examining the existing uses and zoning of nearby properties but the standard of reasonableness should "be appropriately high, so that a plaintiff who has successfully challenged an unconstitutional ordinance will not automatically be free to proceed with its proposed use." *Schwartz v Flint*, 426 Mich 295, 328; 395 NW2d 678 (1986). The trial court's findings of reasonableness are not "unlike the findings that must be read initially in order to find a particular zoning ordinance unconstitutional as applied." *Id.* at 325. If the plaintiff can show the reasonableness of the proposed use by a preponderance of the evidence, the trial court may issue an injunction preventing a township from interfering with the proposed use. *Electro-Tech, Inc, v H F Campbell Co,* 433 Mich 57, 89; 445 NW2d 61 (1989); *Schwartz, supra* at 325.

In this case, our review of the exhibits and testimony supports a finding that plaintiffs' proposed use is reasonable. The record shows that plaintiffs, although not required, submitted studies and reports showing a sound planning rationale, including a comprehensive site use plan. See *Schwartz, supra* at 325 (a proposed use must be specific but need not amount to a plan). Plaintiffs' feasibility analysis accounted for drainage, public utilities, flood plans and wetlands. This evidence, taken together with evidence that the proposed uses were consistent and compatible with development in the area and provided the township uses on the basis of demonstrated and current needs, supports the trial court's finding of reasonableness. Having rejected, *supra*, defendant's argument challenging the trial court's determination that the zoning was arbitrary and capricious, we are not compelled to conclude that a mistake has been made. The trial court's remedy was proper under the circumstances.

IV. Conclusion

For the reasons cited herein, we reverse that portion of the trial court's order finding that defendant's zoning scheme constituted a confiscatory taking. Our review of the record on this issue establishes that a mistake has been made and the trial court clearly erred in this regard. We affirm in all other respects, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Kurtis T. Wilder
/s/ Bill Schuette